

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

ROY BROWN,

Plaintiff,

v.

LATIN AMERICAN MUSIC CO., INC.,  
et al.,

Defendants.

Civil No. 05-1242 (JAF)

**O R D E R**

Plaintiff moves to dismiss the present case, stating that his action for declaratory judgment has become moot due to our previous order dismissing Defendant's counterclaim. Docket Document No. 42. Plaintiff originally sought a declaratory judgment finding that the poem "En la Vida Todo es Ir," was in the public domain pursuant to the Copyright Act of 1909. 17 U.S.C. § 1 (*superseded* by 17 U.S.C. § 101, et. seq. (2006)). Docket Document No. 1. Defendants filed a counterclaim, alleging Plaintiff was infringing upon Defendants' rights to eleven poems, including "En la Vida Todo es Ir." Docket Document No. 10.

On May 9, 2006, we granted Plaintiff's motion for summary judgment against Defendants' counterclaim on the basis that Defendant had failed to establish a prima facie case of copyright infringement, Docket Document No. 31, and reaffirmed our judgment on July 21, 2006, when we denied Defendants' motion for reconsideration. Docket

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1 Document No. 41. Our holding as to Plaintiff's original motion for  
2 summary judgment was not based on finding that the poems in question  
3 had entered the public domain - in fact, we denied Plaintiff's motion  
4 for summary judgment on that very issue. Docket Document No. 31.

5 The issue of whether the poem "En la Vida Todo es Ir" has  
6 entered the public domain is still open, and has not been affected by  
7 our previous orders. Plaintiff is free to voluntarily dismiss his  
8 complaint, but this court will not grant his motion on the question  
9 because the issue is not moot.

10 We, therefore, **DENY** Plaintiff's motion to dismiss. Docket  
11 Document No. 42.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 12<sup>th</sup> day of September, 2006.

14 S/José Antonio Fusté  
15 JOSE ANTONIO FUSTE  
16 Chief U.S. District Judge